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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,784

05/22/2006

Roger Le Comte

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3618

22850

7590

10/01/2009

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.  
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ALEXANDRIA, VA 22314

EXAMINER

HANDY, DWAYNE K

ART UNIT

PAPER NUMBER

1797

NOTIFICATION DATE

DELIVERY MODE

10/01/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/564,784	<b>Applicant(s)</b> COMTE, ROGER LE	
	<b>Examiner</b> DWAYNE K. HANDY	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/17/06;04/07/06</u> .                                       | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 19-24 and 28-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Fischer et al. (5,646,046). Fischer teaches an apparatus and method for automatic analysis of blood samples. The device includes a means for storage by refrigeration, means for heating, means for stirring, and means for sampling. The means for storage by refrigeration includes a refrigerated housing (26) as well as a linear transport track comprised of a single piece of aluminum connected to a Peltier device. The Peltier device may also be used for heating (column 10, lines 33-61).

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Fischer teaches a sample handling system having a sample probe (36) and a plurality of reagent probes in column 9, lines 19-52.

Regarding dependent claim 20: Fisher teaches a cassette frame (46) for holding cuvettes (50) in column 9, line 53 - column 10, line 15.

Claims 22-24: The Examiner considers these limitations to be intended uses of the device.

Claims 31-34: Fischer teaches a quality control program in columns 8-9 and 22-26.

Claim 35: Fischer teaches bar code tracking in column 13, line 58 – column 14, line 28.

4. Claims 19-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Burns et al. (US 2003/0054542). Burns teaches an apparatus and method for automatic analysis of blood samples. The device includes plurality of stations including a means for storage by refrigeration, means for heating, means for stirring, and means for sampling. The means for storage by refrigeration includes a cooling bay (900 – see Paragraph [0333]) located between several heating means (incubators 600, 602, 604 and 606). Burns teaches temperature control using a Peltier device in Paragraphs [0241]-[0258]. Burns teaches a sample handling system comprised of a pipette assemblies (450 and 470) having a pipetting units (456, 480, 482). See Paragraphs [0110] - [0117].

Regarding dependent claim 20: Burns shows a plurality of tubes held in a support in Figures 26 and 56-58. See also Paragraphs [0185] – [0196].

Claims 22-24: The Examiner considers these limitations to be intended uses of the device.

Claims 25-27: Burns teaches orbital mixers at Paragraph [0326]. The Examiner notes that Applicant has used alternative language (and/or) in claim 25.

Claims 31-34: Burns teaches a programmable controller in Paragraphs [0017] and [0100] - [0102].

Claim 35: Burns teaches bar code tracking in Paragraphs [0144], [0150], [0184], [0195], [0196], [0215] and [0263].

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DWAYNE K. HANDY whose telephone number is (571)272-1259. The examiner can normally be reached on M-F 11:00-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dwayne K Handy/  
Examiner, Art Unit 1797

/Jill Warden/  
Supervisory Patent Examiner, Art Unit 1797

September 27, 2009